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STATEMENT

ON

MATRIMONIAL PROPERTY LAWS

IN CANADA



FEBRUARY 1979

**Canadian Advisory Council
on the Status of Women**

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**Conseil consultatif canadien
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STATEMENT ON MATRIMONIAL PROPERTY LAWS IN CANADA

Eight years ago, the Royal Commission on the Status of Women called upon all Canadian provinces and territories to enact matrimonial property laws that would recognize the concept of equal partnership in marriage and would acknowledge the contribution of each of the spouses to that partnership. At the minimum, the Royal Commission said, these laws should provide for an equal distribution between the spouses, upon dissolution of the marriage through separation, divorce or death, of the assets that both of them worked and saved to acquire during the course of their marriage.

Except in Quebec, where a regime of this nature already existed at the time of the Royal Commission's report, no province or territory in Canada has yet attained that minimum objective. Worse still, none of them have yet publicly stated an intention to do so, in spite of the fact that six out of seven provincial Law Reform Commissions reported that equal sharing upon marriage dissolution was clearly the most equitable course to follow (the seventh decided that it wasn't enough).

As evidenced by its 1976 statement on marriage (A Definition of Equity in Marriage, May 1976), the Advisory Council on the Status of Women (ACSW) has always strongly supported the recommendation of the Royal Commission on the Status of Women in this area. In that statement, the ACSW said that the law should treat marriage as a partnership of equals, and that women's work inside the home should be deemed to be of equal value to their husbands' work outside the home.

The attached summary of provincial matrimonial property laws and legislative proposals in Canada demonstrates that provincial governments do not agree with this position. None of the four bills presently being studied by provincial legislatures

(in Prince-Edward-Island, Ontario, Alberta and British Columbia) provide for equal sharing of assets acquired through the spouses' joint efforts during the marriage. In another province, Manitoba, a bill providing for equal sharing was passed but, after a change of government, was suspended before it came into force.

So-called "reforms" that fall short of even the minimum objectives of the Royal Commission on the Status of Women are not enough. The ACSW once again calls on all of this country's governments to provide for matrimonial property regimes that will recognize women's real contribution to the marriage partnership.

SUMMARY OF CURRENT AND PROPOSED PROVINCIAL

MATRIMONIAL PROPERTY LAWS IN CANADA

RESEARCH IN THE HISTORY OF THE

RESEARCH IN THE HISTORY OF THE

NEWFOUNDLAND

I. PRESENT SITUATION (Same as in the Yukon)

The standard matrimonial regime is that of separation of property. It works as follows:

- a) During the marriage: The general rule is that a wife has no rights at all over the property acquired and owned by her husband.

When a husband buys property in his wife's name or transfers property to her, he is presumed to have made her a gift of it. If he wants to claim any part of this property as his, he has to provide proof - other than his word - that the transaction was never meant to be one of gift.

A wife who works in her husband's business or on his farm without receiving a salary does not necessarily acquire any right to compensation or to an interest in her husband's property. The Supreme Court decision in the Irene Murdoch case is still the rule in Newfoundland.

- b) Upon separation or divorce: A wife may be entitled to alimony/maintenance, but she has no more rights to her husband's property than she had during the marriage.
- c) Upon the husband's death: A husband can leave everything he owns to people other than his wife, subject to her possible right to obtain support from the estate if she is destitute.

There are no dower rights in Newfoundland.

II. PROPOSED LEGISLATION

Last year, the Newfoundland government announced that it would study its matrimonial property laws with a view to introducing reforms. No specific proposals have yet been made, and no Law Reform Commission has been asked to study the question, but officials of the Justice Department report that an internal study is just getting under way. As part of this project, the Justice Department will soon place advertisements asking interested parties to submit briefs on the subject.

RECOMMENDATIONS

GENERAL SITUATION (Part 1 of the Report)

The following recommendations are made in the light of the above:

a) During the period of the above, the following recommendations are made:

When a husband has property in his wife's name or otherwise, it is recommended that he should be allowed to have a right of disposal of this property and that his property should be treated as his own.

It is recommended that the husband's business or other property should be treated as his own and that he should be allowed to have a right of disposal of this property.

b) When a husband has property in his wife's name or otherwise, it is recommended that he should be allowed to have a right of disposal of this property.

c) When a husband has property in his wife's name or otherwise, it is recommended that he should be allowed to have a right of disposal of this property.

There are no other points to be considered.

RECOMMENDATIONS (Part 2 of the Report)

It is recommended that the following points should be considered:

PRINCE EDWARD ISLAND

I. PRESENT SITUATION (Same as Nova Scotia and New Brunswick)

The standard matrimonial regime is that of separation of property. It works as follows:

- a) During the marriage: The general rule is that a wife has no rights at all over the property acquired and owned by her husband.

When a husband buys property in his wife's name or transfers property to her, he is presumed to have made her a gift of it. If he wants to claim any part of this property as his, he has to provide proof - other than his word - that the transaction was never meant to be one of gift.

A wife who works in her husband's business or on his farm without receiving a salary does not necessarily acquire any right to compensation or to an interest in her husband's property. The Supreme Court decision in the Irene Murdoch case is still the rule in Prince Edward Island.

The only important exception to the general principle of separation of property is a wife's dower rights, which effectively give her the power to prevent her husband from selling or mortgaging his real property (land and buildings) without her consent. Dower can be avoided, however, for example if the husband forms a company through which he buys the property.

- b) Upon divorce or separation: A wife may be entitled to alimony/maintenance, but she has no more rights to her husband's property than she had during the marriage.

A wife loses her dower rights if she lives apart from her husband and has committed adultery. Dower rights also automatically disappear on divorce.

- c) Upon the husband's death: A husband can leave everything he owns to people other than his wife, subject to her possible right to obtain support from the estate if she is destitute.

If the husband had real property on which dower rights applied, the widow is entitled, for her lifetime, to an estate in one-third of this property. This may mean possession of one-third of the land/buildings for life, or one-third of the rents, profits or interest arising from them.

II. PROPOSED LEGISLATION

The government of Prince Edward Island introduced a matrimonial property bill in the Spring of 1977. The bill was referred to a special legislative committee that was asked to study it and to submit a report at the beginning of the Spring 1978 session.

This bill, which is almost identical to Ontario's, provides for a matrimonial regime of limited deferred sharing with judicial discretion. This regime, which would apply to people who did not opt out of it by contract (except for the provision concerning the matrimonial home, which would apply to all spouses), would work as follows:

- a) During the marriage: Separation of property as in the present situation.

Dower rights would be abolished but the matrimonial home could not be sold or mortgaged without both spouses' consent.

The present presumption of gift when a husband transfers property to his wife or buys property in her name would be abolished. Instead, it would be presumed in such cases that the wife is holding the property in trust for her husband (if she wanted to claim all or part of it, she would have to prove that he meant it to be a gift). This would also apply to property acquired or transferred before the bill came into force.

Wives who had worked in their husbands' businesses or on their farms could claim a property interest or compensation for their work. This entitlement would vary according to each woman's contribution

- b) Upon divorce or separation: "Family assets", including mainly the home and its contents, the family cottage and car and bank accounts for family use, would be divided equally between the spouses. The courts would be empowered to vary these proportions or to include other assets in the sharing "where the division would be inequitable" given specified circumstances. These circumstances would not include the spouses' misconduct, nor would they include the wife's homemaking and child-rearing work as a factor which enabled the husband to acquire his savings and business assets.
- c) Upon the husband's death: As dower rights would be abolished, the widow would have no guaranteed right to any of her husband's property. He could leave it all to someone else, subject to the wife's possible right to claim support if she is destitute.

III. RECOMMENDATIONS OF THE P.E.I. LAW REFORM COMMISSION

The P.E.I. Law Reform Commission was given the very narrow mandate of studying the proposed P.E.I. bill (based on Ontario's proposed bill) introduced by the government. Its recommendations were not made public.

NOVA SCOTIA

I. PRESENT SITUATION (Same as P.E.I. and New Brunswick)

The standard matrimonial regime is that of separation of property. It works as follows:

- a) During the marriage: The general rule is that a wife has no rights at all over the property acquired and owned by her husband.

When a husband buys property in his wife's name or transfers property to her, he is presumed to have made her a gift of it. If he wants to claim any part of this property as his, he has to provide proof - other than his word - that the transaction was never meant to be one of gift.

A wife who works in her husband's business or on his farm without receiving a salary does not necessarily acquire any right to compensation or to an interest in her husband's property. The Supreme Court decision in the Irene Murdoch case is still the rule in Nova Scotia.

The only important exception to the general principle of separation of property is a wife's dower rights, which effectively give her the power to prevent her husband from selling or mortgaging his real property (land and buildings) without her consent. Dower can be avoided, however, for example if the husband forms a company through which he buys the property.

- b) Upon divorce or separation: A wife may be entitled to alimony/maintenance, but she has no more rights to her husband's property than she had during the marriage.

A wife loses her dower rights if she lives apart from her husband and has committed adultery. Dower rights also automatically disappear on divorce.

- c) Upon the husband's death: A husband can leave everything he owns to people other than his wife, subject to her possible right to obtain support from the estate if she is destitute.

If the husband had real property on which dower rights applied, the widow is entitled, for her lifetime, to an estate in one-third of this property. This may mean possession of one-third of the land/buildings for life, or one-third of the rents, profits or interest arising from them.

II. PROPOSED LEGISLATION

Officials of Nova Scotia's Attorney General's Department report that they are presently studying the recommendations of their province's Law Reform Advisory Commission. They also say that there is a possibility of a bill being introduced during the spring 1978 legislative session.

III. RECOMMENDATIONS OF THE NOVA SCOTIA LAW REFORM ADVISORY COMMISSION

The Law Reform Advisory Commission's recommendations to the Nova Scotia government have not yet been made public.

NEW BRUNSWICK

I. PRESENT SITUATION (Same as Nova Scotia and P.E.I.)

The standard matrimonial regime is that of separation of property. It works as follows:

- a) During the marriage: The general rule is that a wife has no rights at all over the property acquired and owned by her husband.

When a husband buys property in his wife's name or transfers property to her, he is presumed to have made her a gift of it. If he wants to claim any part of this property as his, he has to provide proof - other than his word - that the transaction was never meant to be one of gift.

A wife who works in her husband's business or on his farm without receiving a salary does not necessarily acquire any right to compensation or to an interest in her husband's property. The Supreme Court decision in the Irene Murdoch case is still the rule in New Brunswick.

The only important exception to the general principle of separation of property is a wife's dower rights, which effectively give her the power to prevent her husband from selling or mortgaging his real property (land and buildings) without her consent. Dower can be avoided, however, for example if the husband forms a company through which he buys the property.

- b) Upon divorce or separation: A wife may be entitled to alimony/maintenance, but she has no more rights to her husband's property than she had during the marriage.

A wife loses her dower rights if she lives apart from her husband and has committed adultery. Dower rights also automatically disappear on divorce.

- c) Upon the husband's death: A husband can leave everything he owns to people other than his wife, subject to her possible right to obtain support from the estate if she is destitute.

If the husband had real property on which dower rights applied, the widow is entitled, for her lifetime, to an estate in one-third of this property. This may mean possession of one-third of the land/buildings for life, or one-third of the rents, profits or interest arising from them.

II. PROPOSED LEGISLATION

No legislative proposals have yet been made. Officials from the Department of Justice say that a bill might be introduced in the legislature this spring.

III. RECOMMENDATIONS OF THE LAW REFORM DIVISION (DEPARTMENT OF JUSTICE) OF NEW BRUNSWICK, 1976

The recommendations of the Law Reform Division were almost identical to those made by the Ontario Law Reform Commission in 1975. They called for the introduction of a new standard matrimonial regime of deferred sharing with co-ownership of the matrimonial home. Except for the co-ownership of the home, which would apply retroactively to most spouses, this regime would apply only to couples married after its introduction who did not opt out of it by contract. The regime would work as follows:

- a) During the marriage: The general rule of separation of property would remain unchanged. Dower rights would be abolished, and instead all matrimonial homes would be co-owned by the spouses (except for those registered under the wife's name only when this provision came into force).
- b) Upon divorce or separation: Each spouse would be entitled to half of the value of the combined assets both acquired during the marriage (except for gifts and inheritances). These shares could only be varied by the courts in cases where equal sharing would lead to "grossly inequitable results".
- c) Upon death: The surviving spouse would be entitled to half of all the deceased's assets, whatever the provisions of the will.

The Law Reform Division also recommended that property bought or placed in a spouse's name be presumed to belong outright to that spouse.

QUEBEC

I. PRESENT SITUATION

The standard matrimonial regime of Quebec, which is called "partnership of acquests", is a regime of deferred sharing. It applies to people who were married after July 1970 and who did not opt out of the standard regime through a marriage contract. It works as follows:

- a) During the marriage: The spouses are separate as to property and each has sole charge and responsibility of his/her assets and debts.

The only exception to this general rule is that a spouse cannot make important gifts without the other spouse's consent.

- b) Upon separation or divorce: Each spouse is entitled to half the value of the assets acquired by the other spouse during the marriage. The usual result is that the combined assets acquired by the spouses during the marriage (which are called their "acquests") are divided equally between them. Gifts and inheritances are not included in the sharing.
- c) Upon the husband's death: The assets are divided in the same manner as upon separation or divorce, except that the deceased's share goes to his heirs.

Quebec law no longer provides for dower rights, nor does it allow wives to apply for support from the estate when they are left destitute. This latter omission does not usually matter when the spouses are married under the standard matrimonial regime (as wives automatically get half their husbands' "acquests"), but it can have important consequences in the case of spouses who chose by marriage contract to remain separate as to property.

II. PROPOSED LEGISLATION

No legislative proposals have yet been introduced to modify Quebec's still new standard matrimonial regime, but it is expected that proposals will be made in the future in relation to the matrimonial home and its contents (see below).

III. RECOMMENDATIONS OF THE QUEBEC CIVIL CODE REVISION OFFICE

Quebec's present standard matrimonial regime of deferred sharing, adopted in 1969, was based on the recommendations of the Civil Code Revision Office.

In 1974, the Revision Office further recommended that all spouses, whatever their matrimonial regime, be subjected to the following provisions concerning the matrimonial home and its contents:

- That no spouse (except if deserted) be able to sell or move out the contents of the family residence without the other spouse's consent;
- That when the spouses are tenants, the spouse who holds the lease be unable to sub-let or terminate the lease without the other spouse's consent;
- That either spouse be able to register a "declaration of residence" against the matrimonial home;
- That this registration prevent the spouse who owns the home from selling or mortgaging it without the other spouse's consent;
- That, subject to possible compensation, the court be empowered to transfer the ownership of the home and its contents to the non-owner spouse upon separation or divorce, and to transfer the ownership of the home (and not its contents) to the surviving spouse upon death.

The Revision Office also made a tentative recommendation to the effect of guaranteeing widows and widowers a fixed share of the deceased spouse's estate, whatever the matrimonial regime of the provisions of the deceased's will. This recommendation was found to be quite controversial, however, and the Revision Office's final decision on this point has not yet been made public.

ONTARIO

I. PRESENT SITUATION

The standard matrimonial regime is that of separation of property. It works as follows:

- a) During the marriage: The general rule is that a wife has no rights at all over the property acquired and owned by her husband.

Until 1975, when a husband bought property in his wife's name he was presumed to have made her a gift of it (if he wanted it back, he had to provide proof - other than his word - that it had not been meant to be a gift). Since 1975, property placed by a husband in his wife's name is presumed to be held by her in trust for her husband (if she wants to keep all or part of it, she has to prove that he meant it to be a gift). One exception to this new rule is property put in the joint names of both spouses, which is presumed to belong to both of them.

Also since 1975, a wife who works in her husband's business or farm can claim a property interest or compensation for her work. Her entitlement will vary according to the importance of her contribution.

The only important exception to the general principle of separation of property is a wife's dower rights, which effectively give her the power to prevent her husband from selling or mortgaging his real property (land and buildings) without her consent. Dower can be avoided, however, for example if the husband forms a company through which he buys the property.

- b) Upon divorce or separation: A wife may be entitled to alimony/maintenance, but she has no more rights to her husband's property than she had during the marriage.

A wife loses her dower rights if she lives common law with another man. Dower rights also automatically disappear on divorce.

- c) Upon the husband's death: A husband can leave everything he owns to people other than his wife, subject to her possible right to obtain support from the estate if she is destitute.

If the husband had real property on which dower rights applied, the widow is entitled, for her lifetime, to an estate in one-third of this property. This may mean possession of one-third of the land/buildings for life, or one-third of the rents, profits or interest arising from them.

II. PROPOSED LEGISLATION

Ontario's matrimonial property rights bill, whose third version was introduced in the Fall 1977 session of the legislature and which is slated to be re-introduced and passed during the coming Spring 1978 session, would establish a standard matrimonial regime of limited deferred sharing with judicial discretion. This regime, which would apply to people who did not opt out of it by contract (except for the provisions concerning the matrimonial home, which would apply to all spouses), would work as follows:

- a) During the marriage: Separation of property as in the present situation.

Dower rights would be abolished but the matrimonial home could not be sold or mortgaged without both spouses' consent.

The 1975 rule presuming that property placed by a husband in his wife's name is still his would be made retroactive, which means that it would also apply to property acquired or transferred before 1975.

The wife's right to a share in the business or farm she has worked in/on would remain unchanged.

- b) Upon divorce or separation: "Family assets", including mainly the home and its contents, the family cottage and car and bank accounts for family use, would be divided equally between the spouses. The courts would be empowered to vary these proportions or to include other assets in the sharing "where the division would be inequitable" given specified circumstances. These circumstances would not include the spouses' misconduct, nor would they include the wife's homemaking and child-rearing work as a factor which enabled the husband to acquire his savings and business assets.
- c) Upon the husband's death: As dower rights would be abolished, the widow would have no guaranteed right to any of her husband's property. He could leave it all to someone else, subject to the wife's right to claim support if she is destitute.

III. RECOMMENDATIONS OF THE ONTARIO LAW REFORM COMMISSION, 1975

The Commission recommended that Ontario adopt the standard matrimonial regime of deferred sharing with co-ownership of the home. Under this regime, neither spouse could dispose of the home without the other's consent but they would otherwise be separate as to property during the marriage.

Upon separation or divorce, each spouse would have been entitled to half of the combined assets acquired during the marriage (except for gifts and inheritances). Upon a spouse's death, the survivor would have been entitled to half of all the deceased's assets.

The Commission also recommended that property bought or placed in a spouse's name be presumed to belong outright to that spouse.

MANITOBA

I. PRESENT SITUATION

The standard matrimonial regime is that of separation of property. It works as follows:

- a) During the marriage: The general rule is that a wife has no rights at all over the property acquired and owned by her husband.

When a husband buys property in his wife's name or transfers property to her, he is presumed to have made her a gift of it. If he wants to claim any part of this property as his, he has to provide proof - other than his word - that the transaction was never meant to be one of gift.

A wife who works in her husband's business or on his farm without receiving a salary does not necessarily acquire any right to compensation or to an interest in her husband's property. The Supreme Court decision in the Irene Murdoch case is still the rule in Manitoba.

The only important exception to the general principle of separation of property is a wife's homestead rights, which prevent husbands from selling or mortgaging the matrimonial home and the land on which it stands (in the countryside, this could mean as much as 320 acres of land) without their wives' written consent.

- b) Upon separation or divorce: A wife may be entitled to alimony/maintenance, but she has no more rights to her husband's property than she had during the marriage.

A wife loses her homestead rights if she deserts her husband with the intention of living "separate and apart" from him. Homestead rights also automatically disappear on divorce.

- c) Upon the husband's death: A wife who has not lost her homestead rights is entitled to a life estate in the homestead. This means that she can live on the homestead for the rest of her life, or that she can collect the rents and profits arising from it.

The Dower Act also gives Manitoba widows a right to receive one-third of the value of their husbands' estates, irrespective of their wills. This right can be lost in the same way as the homestead rights (by desertion), and it does not apply if the widow inherits more than \$150,000 (or \$100,000 if married before 1964) through her husband's will.

II. PROPOSED LEGISLATION

Manitoba has been frenetically active in the area of matrimonial property legislation in 1977. A new Marital Property Act, which was passed by the NDP government in June 1977 and was to come in force on January 1, 1978, was suspended by a Conservative government bill passed in December 1977. The new government also formed a three-member committee to study the Act, and some officials have reported that legislation might be introduced on this in the spring of 1978. Amendments to the Dower Act were also passed in June 1977 but were never proclaimed (see below).

The Marital Property Act would have introduced a mixed standard matrimonial regime of community of property and deferred sharing. It would have applied to all spouses with the exception of those who jointly chose to opt out through a marriage contract and those who were separated when this Act was first introduced. It would have worked as follows:

- a) During the marriage: The general principle was that of immediate co-ownership by the spouses of all non-commercial assets. These assets would have belonged to both spouses equally as soon as they were acquired. Non-commercial assets would have included the contents of the home, the family cottage and the car, unless these had been given or willed to one spouse with the intention of keeping them separate. They would not have included cash, bank accounts and investment assets held by only one spouse (these were defined as commercial assets).

The matrimonial home would always have been co-owned if it had been acquired during the marriage or in contemplation thereof. Homestead rights would have remained unchanged.

- b) Upon divorce or separation: Each spouse would have been entitled to a half share of the value of their combined commercial assets. These equal shares could only have been varied in "extraordinary circumstances" of gross injustice.
- c) Upon the husband's death: The widow would automatically have inherited her husband's share of the home. Her rights under the Dower Act would have remained unchanged. The Dower Act amendments which were passed but not proclaimed would have increased the surviving spouse's guaranteed right to a share of the deceased's estate from one-third to one-half.

III. RECOMMENDATIONS OF THE MANITOBA LAW REFORM COMMISSION, 1976

The Commission recommended a matrimonial regime of deferred sharing with co-ownership of the matrimonial home. It would have applied to spouses married after its introduction who did not opt out of it by contract. Except for co-ownership of the matrimonial home as soon as it was acquired, the spouses would have remained separate as to property during the marriage. Upon separation or divorce, however, the combined assets acquired by the spouses during the marriage (except for gifts and inheritances) would have been divided equally between them.

The Commission also recommended that the surviving spouse's share of the deceased's estate under the Dower Act be increased to one-half.

SASKATCHEWAN

I. PRESENT SITUATION

The standard matrimonial regime is that of judicial discretion. It works as follows:

- a) During the marriage: The general rule is that a wife has no rights at all over the property acquired and owned by her husband.

When a husband buys property in his wife's name or transfers property to her, he is presumed to have made her a gift of it. If he wants to claim any part of this property as his, he has to provide proof - other than his word - that the transaction was never meant to be one of gift.

The only important exception to the general principle of separation of property is a wife's homestead rights, which prevent husbands from selling or mortgaging the matrimonial home and the land on which it stands (in the countryside, this could mean as much as 160 acres of land) without their wives' written consent.

- b) Upon separation or divorce: Either spouse may apply to the courts which have, since 1975, the power to redistribute property between the spouses in a "fair and equitable" manner. In reaching their decisions, judges must take into account "the respective contributions of the husband and wife whether in the form of money, services, prudent management, caring for the home and family or in any other form whatsoever". Sexual conduct is not to be considered.

Although judgments have varied greatly according to the circumstances of each case brought before the courts, one element has remained constant: the wife is never given a share of her husband's business or farm (except for the home) unless she has directly worked in/on it. Women's work inside the home is therefore judged to have considerably less value than their husbands' work outside the home.

Another problem is that women who are granted part of their husbands' property are often denied maintenance, with the result that many of them have to spend this capital to live and end up no further ahead a few years later.

A wife loses her homestead rights if she is living apart from her husband and has committed adultery. Homestead rights also automatically disappear on divorce.

- c) Upon the husband's death: A wife's homestead rights do not entitle her to an estate in the matrimonial home, but her permission is still required to sell or mortgage it. The

usual result is that the widow retains possession of the home for her lifetime or renounces her right to prevent disposition of it in exchange for a financial consideration.

If the widow has no money and her husband has left all he owned to someone else, she can apply to the courts which can grant her a "reasonable share" of the estate given her conduct and the circumstances.

II. PROPOSED LEGISLATION

A bill is expected to be introduced in the spring of 1978 with a view to implementing the recommendations of the Law Reform Commission of Saskatchewan concerning the matrimonial home (see below).

III. RECOMMENDATIONS OF THE LAW REFORM COMMISSION OF SASKATCHEWAN

In 1974, the Commission made tentative recommendations for matrimonial property law reform in Saskatchewan. They called for a three-stage development whose ultimate goal would be the recognition of marriage as a partnership of equals.

The first stage of this process, which was judicial discretion, was implemented in 1975. The second stage was to be the co-ownership of the matrimonial home. In its final recommendations on the matrimonial home in 1976, the Commission called for the co-ownership by the spouses of all matrimonial homes, whenever and however acquired. Neither spouse would be able to sell or mortgage the home without the other's consent, but the surviving spouse would not necessarily inherit the deceased's share. Additionally, neither spouse would be able to move out the furniture without the other's consent. Spouses would be able to opt out of these provisions by joint agreement, but contracts entered into before this law came into force could be set aside by the courts. Judicial discretion would also apply in other cases, such as very short marriages or "extreme economic misconduct".

The third stage of the process was to be the introduction of a deferred sharing regime, under which all assets acquired by the spouses during the marriage (except for gifts and inheritances) would have been divided between them equally upon divorce or separation. In its final report on matrimonial homes, the Commission wrote that it was reluctant to proceed with further work on deferred sharing as it had not "received a consensus in its favour". Officials of the Commission report that they have received no complaints from women since the introduction of judicial discretion, which has led them to believe that no further reform is required.

ALBERTA

I. PRESENT SITUATION

The standard matrimonial regime is that of separation of property. It works as follows:

- a) During the marriage: The general rule is that a wife has no rights at all over the property acquired and owned by her husband.

When a husband buys property in his wife's name or transfers property to her, he is presumed to have made her a gift of it. If he wants to claim any part of this property as his, he has to provide proof - other than his word - that the transaction was never meant to be one of gift.

A wife who works in her husband's business or on his farm without receiving a salary does not necessarily acquire any right to compensation or to an interest in her husband's property. The Supreme Court decision in the Irene Murdoch case is still the rule in Alberta.

The only important exception to the general principle of separation of property is a wife's homestead rights, which prevent husbands from selling or mortgaging the matrimonial home and the land on which it stands (in the countryside, this could mean as much as 160 acres of land) without their wives' written consent.

- b) Upon separation or divorce: A wife may be entitled to alimony/maintenance, but she has no more rights to her husband's property than she had during the marriage.

A wife loses her homestead rights if she lives apart from her husband and has committed adultery. Homestead rights also automatically disappear on divorce.

- c) Upon the husband's death: A wife who has not lost her homestead rights is entitled to a life estate in the homestead and its contents. This means that she can live on the homestead (and use the furniture) for the rest of her life, or that she can collect the rents and profits arising from it.

Apart from that, a husband may leave all he owns to someone else, subject to the widow's possible right to obtain support from the estate if she is destitute.

II. PROPOSED LEGISLATION

The Alberta government introduced its "Matrimonial Property Bill" in the last session of the legislature. This bill, which is expected to be reintroduced during the spring 1978 session, provides

for a matrimonial regime of judicial discretion. It would apply to all spouses, and would work as follows:

- a) During the marriage: Same general rule of separation of property as in the present situation and same homestead rights.
- b) Upon separation or divorce: Either spouse could apply to the courts, which would be empowered to redistribute property between the spouses in a "just" manner. To reach their decisions, judges would have to take nineteen factors into account, including "the contribution made by each spouse to the welfare of the family, including a contribution made as a homemaker or parent", "the conduct of the spouses" and "any fact or circumstance that is relevant". Judges would not be required to assume that a wife and mother's work inside the home is of equal value to her husband's work outside the home.
- c) Upon the husband's death: No change for women who were living with their husbands. Separated wives would have six months to claim their share of their deceased husbands' property under the rules described above.

III. RECOMMENDATIONS OF THE ALBERTA INSTITUTE OF LAW RESEARCH AND REFORM, 1975

In its final report, the Institute made two full sets of recommendations. The second set, which was a minority proposal (supported by less than half of the Institute's board members), is the one that the government accepted and embodied in the bill described above. One important difference is that the Institute's proposal would have allowed for the same distribution of property upon all husbands' deaths as upon separation and divorce.

The Institute's majority proposal called for the introduction of a standard matrimonial regime of deferred sharing. It would have applied to spouses married after that law came into force who had not opted out of the standard regime through a marriage contract.

The proposed deferred sharing regime would not have changed the spouses' position during their marriage. Upon separation, divorce or death, however, the combined assets acquired by the spouses during the marriage (with the exception of gifts and inheritances) would have been divided equally between them.

BRITISH COLUMBIA

I. PRESENT SITUATION

Authorities disagree on what standard matrimonial regime exists in British Columbia at the present time. Some judges have maintained that separation of property is still the rule, while others have held that judicial discretion now prevails. The resulting situation is as follows:

- a) During the marriage: The legal battle mentioned above has no effect on the situation of the spouses while they are living together. The general rule is still that a wife has no rights at all over the property acquired and owned by her husband.

The following common law rule also remains unchanged. It provides that when a husband buys property in his wife's name or transfers property to her, he is presumed to have made her a gift of it. If he wants to claim any part of this property as his, he has to provide proof - other than his word - that the transaction was never meant to be one of gift.

There is also agreement on the wife's right, under the Wives' Protection Act, to register an interest in the matrimonial home. This registration does not give her a property interest in the home, but it prevents husbands from selling or mortgaging the home without their spouses' consent.

- b) Upon separation or divorce: This is the time when the disagreement over B.C.'s matrimonial regime can have serious consequences. Judges who maintain that separation of property is still the rule may grant a woman alimony/maintenance, but do not consider themselves empowered to give a wife any right over her husband's property, whatever the circumstances. For these judges, the Murdoch case still applies in B.C.

On the other hand, judges who believe that B.C. courts have the right to use discretion in cases of division of marital property will redistribute assets between the spouses when they think it is justified in the circumstances. Although no clear standards have emerged, it would at least appear that judges who hold this view would grant some share of the husband's property to a woman who had worked without pay in her husband's business or on his farm.

The wife's registered right to prevent her husband from selling or mortgaging the matrimonial home may be lost if she commits adultery. This right also automatically disappears on divorce.

- c) Upon the husband's death: The wife's registered interest in the matrimonial home entitles her to a life estate in it, which means that she can live in the home for the rest of her life.

Apart from that, a husband can leave everything he owns to people other than his wife, subject to her possible right to obtain support from the estate if she is destitute.

II. PROPOSED LEGISLATION

The B.C. government introduced a "Family Relations Amendment Bill" in the last session of the legislature. This bill, which provides for a standard matrimonial regime of limited deferred sharing with judicial discretion, would apply to all spouses who did not opt of it by contract. It would work as follows:

- a) During the marriage: Same as the present situation.
- b) Upon divorce or separation: The general principle would be that "family assets", including mainly the home and its contents, the family cottage and car, bank accounts for family use and rights under pension or retirement savings plans, would be divided equally between the spouses. Business assets (as well as savings not in RRSPs) acquired during the marriage would not normally be shared. Contrary to the B.C. government's statements regarding this bill, it does not "recognize marriage as a socio-economic partnership in which the homemaking, breadwinning and child-rearing duties are considered of equal value".

The courts would be empowered to vary the equal shares of "family assets" if the result would otherwise be "unfair" considering a number of specific circumstances which do not include sexual conduct. Judges could also order the sharing of the spouses' other assets, but the bill gives no clear guidelines for this and does not even say that such sharing must take place when a wife has worked without pay in her husband's business or on his farm.

- c) Upon the husband's death: Same as the present situation.

III. RECOMMENDATIONS OF THE B.C. ROYAL COMMISSION ON FAMILY AND CHILDREN'S LAW (BERGER COMMISSION), 1975

The Commission recommended a standard matrimonial regime of community of property, which would have applied to people married after the law was introduced who did not opt out of it by contract.

This standard regime would have provided for the immediate co-ownership of all assets by the spouses as soon as they were acquired, with the exception of gifts and inheritances. Both spouses would have had equal rights of management over their common assets, subject to some exceptions designed to make the regime more flexible.

The Commission felt that full and immediate community of property with joint management by the spouses was the only matrimonial regime that would truly recognize the equality of the spouses in the marriage partnership.

NORTHWEST TERRITORIES

I. PRESENT SITUATION

The standard matrimonial regime is that of judicial discretion. It works as follows:

- a) During the marriage: The general rule is that a wife has no rights at all over the property acquired and owned by her husband.

When a husband buys property in his wife's name or transfers property to her, he is presumed to have made her a gift of it. If he wants to claim any part of this property as his, he has to provide proof - other than his word - that the transaction was never meant to be one of gift.

- b) Upon separation or divorce: Either spouse may apply to the courts which have, since 1974, the power to redistribute property between the spouses in a "fair and equitable" manner. In reaching their decisions, judges must take into account "the respective contributions of the husband and wife whether in the form of money, services, prudent management, caring for the home and family or in any other form whatsoever". Sexual conduct is not to be considered.

No information is available on judgments rendered under this law, but it is probably fair to assume that they would greatly resemble those of Saskatchewan courts, whose laws are identical on this subject. Judgments in Saskatchewan have varied greatly according to the circumstances of each case brought before the courts, but one element has remained constant: the wife is never given a share of her husband's business or farm (except for the home) unless she has directly worked in/on it. Women's work inside the home is therefore judged to have considerably less value than their husbands' work outside the home.

- c) Upon the husband's death: A husband can leave everything he owns to people other than his wife, subject to her possible right to obtain support from the estate if she is destitute.

There are no homestead or dower rights in the Northwest Territories.

II. PROPOSED LEGISLATION

The Administration of the Northwest Territories passed legislation in 1974 that would have 1) prevented a spouse from selling or mortgaging the matrimonial home without the other spouse's consent; and 2) given the surviving spouse a life estate in the home. These provisions have still not been proclaimed in force.

Although this piece of legislation presents a special problem because it requires an amendment to another law before it can be implemented, officials of the Northwest Territories report that another factor in the delay is the lack of pressure from the public in general and women in particular.

YUKON

I. PRESENT SITUATION (Same as in Newfoundland)

The standard matrimonial regime is that of separation of property. It works as follows:

- a) During the marriage: The general rule is that a wife has no rights at all over the property acquired and owned by her husband.

When a husband buys property in his wife's name or transfers property to her, he is presumed to have made her a gift. If he wants to claim any part of this property, he has to provide proof - other than his word - that the transaction was never meant to be one of gift.

A wife who works in her husband's business without receiving a salary does not necessarily acquire a right to compensation or to an interest in her husband's business property. The Supreme Court decision in the Irene Murdoch case is still the rule in the Yukon.

- b) Upon separation or divorce: A wife may be entitled to alimony/maintenance, but she has no more rights to her husband's property than she had during the marriage.
- c) Upon the husband's death: A husband can leave everything he owns to people other than his wife, subject to her possible right to obtain support from the estate if she is destitute.

There are no homestead or dower rights in the Yukon.

II. PROPOSED LEGISLATION

No propositions have yet been put forward in view of reforming the Yukon's matrimonial property laws. Officials of the Yukon's Department of Legal Affairs report that: 1) the Yukon is too small to be able to afford the extensive kind of law reform research being done in many provinces, with the result that the usual practice is to wait until everyone else has finished researching the subject and reached conclusions; and 2) there have been no public pressures in the Yukon to have the laws changed.

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